

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-2443

IN RE: PHILIP WILL DAVIS,

Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the
(Related to W.D. Pa. Crim. No. 96-cr-00185-17)

Submitted Under Rule 21, Fed. R. App. Pro.
JUNE 23, 2005

Before: ALITO, MCKEE and AMBRO, Circuit Judges

(Filed: August 3, 2005)

OPINION

PER CURIAM

Pro se petitioner Philip Will Davis seeks a writ of mandamus to compel the United States District Court for the Western District of Pennsylvania to make a different determination on his motion filed pursuant to 28 U.S.C. § 2255. The District Court denied relief, concluding that Davis's motion was untimely under section 2255's one-year limitations period. In his mandamus petition, Davis asks this Court to compel the District

Court to apply the one-year limitations period in a different manner, thereby allowing him to bring his claim under Ring v. Arizona, 536 U.S. 584 (2002), in a timely section 2255 motion. Davis has submitted a letter dated July 19, 2004, pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, citing Blakely v. Washington, 124 S. Ct. 2531 (2004), as it pertains to his claim under Ring.

The remedy of mandamus is appropriate to aid this Court's jurisdiction in extraordinary circumstances only. See In re Chambers Dev. Co., 148 F.3d 214, 223 (3d Cir. 1998). To prevail, a petitioner must show, among other things, that there are no other available means to obtain the relief he seeks. Id. Significantly, mandamus is not an alternative to an appeal; because of its drastic nature, "a writ of mandamus should not be issued where relief may be obtained through an ordinary appeal." Id.

We observe that Davis has appealed the District Court's order, and his application for a certificate of appealability under 28 U.S.C. § 2253(c)(1) is currently pending in this Court in C.A. No. 04-1604. Thus, Davis clearly has available means of obtaining relief other than by way of a writ of mandamus.

For the foregoing reasons, we will deny the petition for a writ of mandamus.